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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/963,239	11/03/97	GOUGH	<sup>mk</sup> E 13724-787

QM12/0915  
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EXAMINER

PEFFLEY, M

ART UNIT	PAPER NUMBER
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3739

<sup>22</sup>

DATE MAILED: 09/15/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/963,239

Applicant(s)

GOUGH ET AL.

Examiner

Michael Peffley

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

***Continued Prosecution Application***

The request filed on September 1, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/963,239 is acceptable and a CPA has been established. An action on the CPA follows.

In particular, applicant's amendments filed with the CPA request have obviated the objection to the specification and the 35 USC 112, second paragraph rejections. The following is a complete response to the September 1, 2000 communication.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 46 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure determining dimensional or tumor periphery properties using the impedance monitoring means. The only use of the impedance sensors is to determine tissue impedance.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVeen et al ('276) in view of the teaching of Edwards et al ('675).

As addressed in previous Office actions, Leveen et al disclose a device which comprises a trocar (502) and a multiple antenna ablation device (26) including three or more antennas (24) deployable from the trocar lumen in a lateral direction. Each antenna has an ablation surface, and the antennas are used to create an ablation geometry. The device may be used in either a bipolar or a monopolar manner, with the trocar serving as the return in the bipolar mode.

The features not expressly taught by LeVeen et al is the use of an impedance monitoring means, and a movable insulation sleeve disposed on an antenna or trocar.

It has been previously established that Edwards et al ('675) teach the use of impedance sensors to monitor tissue which is being treated with a multiple antenna device (see column 13, lines 11-13). Inherently, these impedance sensors would determine a property (i.e. impedance) of tissue. The examiner maintains that such an impedance sensor means would prevent the device from "impeding out". Further discussion on the limitation of "impeding out" can be found in previous Office actions.

Edwards et al also teach that it is known to provide the multiple antennas of the ablation system with a sheath (60) which surrounds the deployable antennas. The sheath is movable to control the length of the exposed portion of the antenna (see column 10, lines 9-14). Also, it is noted that LeVeen et al disclose the use of an insulation on the antennas (figures 7 and 8).

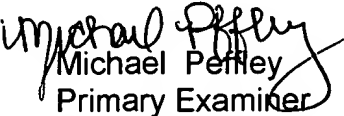
Finally, Edwards et al also teach that the multiple antennas may be advanced through side ports in the support structure (i.e. trocar). See figures 14-17.

To have provided the LeVeen et al device with an impedance monitoring and control means to control the delivery of energy to tissue would have been an obvious modification for one of ordinary skill in the art in view of the teaching of Edwards et al ('675). To have further provided the LeVeen et al antennas with a movable insulation layer to vary the exposed length of the antennas would have been an obvious design consideration for one of ordinary skill in the art in view of the teaching of Edwards et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (703) 308-4305. The examiner can normally be reached on M-F (7:00-4:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda M Dvorak can be reached on (703) 308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Michael Peffley  
Primary Examiner  
Art Unit 3739

mp  
September 14, 2000